UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

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POWER UP LENDING GROUP, LTD.,

Case No.: 2:16-cv-1025 (ADS) (AYS)

Plaintiff,

-against-

NORTH AMERICAN CUSTOM SPECIALTY VEHICLES, INC. A DE CORPORATION D/B/A NACS VEHICLES, INC. A SUBSIDIARY OF GLOBAL DIGITAL AND GLOBAL DIGITAL SOLUTIONS, INC. AND JEROME J. GOMOLSKI,

Defendants.

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PLAINTIFF'S MEMORANDUM OF LAW

Naidich Wurman LLP
Attorneys for Plaintiff
111 Great Neck Road – Suite 214
Great Neck, New York 11021

PRELIMINARY STATEMENT

The plaintiff, Power Up Lending Group, Ltd., respectfully submits this Memorandum of Law in support of its motion for a default judgment against defendants North American Custom Specialty Vehicles, Inc., Global Digital Solutions, Inc., and Jerome J. Gomolski.

STATEMENT OF FACT

For a statement of fact, the Court is respectfully referred to the Affidavit of Curt Kramer, sworn to on the 18th day of October, 2016, and the contents of the Verified Complaint, both of which are being submitted in support of the motion.

ARGUMENT

In this action to collect on a loan agreement and guarantee, the defendants, North American Custom Specialty Vehicles, Inc., Global Digital Solutions, Inc. and Jerome J. Gomolski, were duly served with the Summons and Complaint and have failed to answer or appear.

Under these circumstances, we seek entry of a default judgment pursuant to Federal Rule of Civil Procedure 55, which provides that where, as here, a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default. In the case at bar, the Clerk of the Court has issued a Certificate of Default which is also being submitted in support of the motion.

Under the circumstances presented, we respectfully submit that a default judgment can and should be entered against the defendants. Bobrow Greenapple & Skolnik v. Woods, 865 F.2d 43 (2d Cir. 1989); National Union Fire Insurance Company of Pittsburgh v. People's Republic of the Congo, 729 F. Supp. 936 (S.D.N.Y.1989); Philip Morris USA Inc. v. A&V Minimarket, Inc., 592 F. Supp. 2d 669 (S.D.N.Y.2008).

For example, in Hounddog Productions, LLC v. Empire Film Group, Inc., 767 F. Supp. 2d 480 (S.D.N.Y.2011), as here, the corporate defendant took no steps to retain counsel or to otherwise answer or appear. Since the corporate defendant had failed to "otherwise defend" the action, a default judgment was entered against it.

Stated otherwise, the grounds for a default judgment have been established in this case. The defendants have failed to plead or otherwise defend in this action, no substantive material issues of fact appear to be in dispute, and, on this record, it appears unlikely that the defendants would be able to demonstrate the good cause necessary to vacate a default judgment pursuant to FRCP Rule 55(c). Thus, entry of a default judgment is warranted. Briarpatch Limited, L.P. v. Geisler Roberdeau, Inc., 513 F. Supp. 2d 1 (S.D.N.Y.2007).

Moreover, under the circumstances presented, we submit that the damages may be ascertained by the court without the necessity of a hearing. La Barbera v. Federal Metal & Glass Corp., 666 F. Supp.2d 341 (E.D.N.Y.2009).

That is to say a default judgment is generally justified when a party fails to respond, and the resulting default is deemed to constitute a concession of all well pleaded allegations of liability. Trans Atlantic Marine Planes Agency v. Ace Shipping, 109 F.3d 105 (2d Cir. 1997); Carlone v. Lion & The Bull Films, Inc., 861 F. Supp. 2d 312 (S.D.N.Y. 2012); Greystone Bank v. Skyline Woods Realty, LLC., 817 F. Supp. 2d 57 (N.D.N.Y. 2011)

In conclusion, the plaintiff has presented the duly executed a factoring agreement and guaranty and proof of default, such that a *prima facie* case has been made out. Craven v. Rigas, 71 A.D.3d 1220, 896 N.Y.S.2d 504 (3d Dep't, 2010); Alard, LLC. v. Weiss, 1 A.D.3d 131, 767 N.Y.S.2d 11 (1st Dep't, 2003); Gittleson v. Dempster, 148 A.D.2d 578,, 539 N.Y.S.2d 46 (2d

Dep't, 1989). Thus, there is no defense to this action and judgment should be entered accordingly.

CONCLUSION

A default judgment should be entered against the defendants for the reasons set forth above.

Dated: Great Neck, New York
October 18, 2016

Respectfully Submitted,

By: ______________________

Richard S. Naidich (RSN4102)
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Pursuant to 22 NYCRR 130-1.1, the undersigned, an attorney admitted to practice in the courts of New York State, certifies that, upon information and belief and reasonable inquiry, the contentions contained in the annexed document are not frivolous.

DATED: October 18, 2016

Signature: ____________________
Print: Richard S. Naidich, Esq.

Service of a copy of the within is hereby admitted.
Dated:

____
Attorney(s) for

PLEASE TAKE NOTICE

NOTICE OF ENTRY that the within is a (certified) true copy of an Order entered in the office of the clerk of the within named Court on , 20______.

NOTICE OF SETTLEMENT that an Order of which the within is a true copy will be presented for settlement to the Hon. , one of the judges of within named Court, at on , 20_____ at a.m.

DATED: Great Neck, New York
October 18, 2016

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